



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

SEPTEMBER 23, 2003

PRESENT: Acevedo, Benich, Engles, Lyle, Mueller, Weston

ABSENT: Escobar

LATE: None

STAFF: Planning Manager (PM) Rowe, Associate Planner (AP) Tolentino, Community Development Director (CDD) Bischoff, Senior Engineer (SE) Creer and Minutes Clerk Johnson. It was noted that City Councilmember Carr was in the audience.

Chair Mueller called the meeting to order at 7:04 P.M.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Mueller opened the public hearing.

AP Tolentino was asked to give an overview of her position and duties in the Planning Department.

With no one present wishing to address matters not appearing on the agenda, the public hearing was closed.

MINUTES:

SEPTEMBER 9, 2003 COMMISSIONERS LYLE/BENICH MOTIONED TO APPROVE THE SEPTEMBER 9, 2003 MINUTES WITH THE FOLLOWING AMENDMENTS:

Page 3 paragraph 2: ~~42~~ M12

Page 3 paragraph 4: ~~42~~ P1

Page 3 paragraph 7: *increasing* the size

Page 4 2nd paragraph, next to last line: that *if* the; ~~complete~~ *accelerate*

Page 9, paragraph 7: Hoyaskimo ~~is interested in continuing with the CUP?~~ *envisions*

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expanding to other types of non-invasive diagnostic machines or techniques in the future?

Page 13 top paragraph: ~~reduced~~ *produced*

Page 13 paragraph 4: ~~multi-square foot~~ much larger; insert "of separate small homes" after "appearance".

Page 13 last paragraph line 7: ~~if the~~ under Measure P ~~update~~ *passes*, we will have to submit two sets of plans

Page 14 paragraph 4: economy *would be strongly affected*

THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, LYLE, MUELLER; NOES: NONE; ABSTAIN: WESTON; ABSENT: ESCOBAR.

CONSENT CALENDAR:

1) VACATION OF A PORTION OF BARRETT AVENUE Review vacation of a street held by the City as a public right-of-way and make a finding of consistency with the General Plan.

2) EOT-03-14: CONDIT-PATEL A request for an Extension of Time for a Conditional Use Permit approval to allow for the construction of a 6,500 square foot building, arcade, restaurant and miniature golf course on 1.6 acres. The location is the W. side of Condit Rd., approximately 800 ft S. of the E. Dunne Ave./Condit Rd. intersection. The zoning for the site is Planned Unit Development (PUD).

COMMISSIONERS LYLE/BENICH MOTIONED TO APPROVE THE CONSENT CALENDAR. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ESCOBAR.

Because of the high level of interest and the attendance of Attorney Chris Taylor (who helped draft the Ordinance), Commissioners requested that item 7 be heard at this time.

OTHER BUSINESS:

7) REVIEW OF PROPOSED MEASURE P UPDATE INITIATIVE CDD Bischoff gave the staff report, reminding that the Commissioners had heard the City's proposal initially in April with a review at the last meeting, when all Commissioners had been urged to contact PM Rowe or CDD Bischoff by e-mail with any concerns or questions. CDD Bischoff again recognized Commissioners Engles, Lyle and Weston for participation on the Measure P Update Committee.

As an overview, CDD Bischoff presented the following details:

This is a City proposal to extend and update Measure P to the year 2020 with a number of changes. The work plan of the Committee was presented, with the notation that having surveyed a number of the City's residents, and with input at Community-based workshops, it was ascertained that:

- 'more is less' (most residents appear to support greater restrictions)
- Measure P is supported by the residents

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- Measure P is not to be tinkered with

The proposed Ordinance will have a 'sunset' date of 2020 and will see the population climb from a projected 38,800 in 2010 to a total of 48,000 in 2020. CDD Bischoff reminded that the 24 major points of the proposed Measure P ordinance have been considered twice before by the Commissioners, several times by the Committee and have been presented to the City Council. In addition to those 24 major points, three additional goals have been added:

- potential annexation of three targeted subdivisions
- desirable infill change requirements (including infrastructure enhancements)
- where some had concerns of abuse in the past
- elimination of the 'east-west split' requirement (a 'trade-off' for set-aside for the downtown area)

CDD Bischoff continued that the proposed growth rate is similar to that of the current Measure P, has:

- a reservation of allocations for the downtown area
- a modification for vertical mixed units (offices and/or businesses on ground floor, residences above) with some carry-over allocations presented
- changes to some of the scoring categories [*safety/security 5>10; natural/environmental 15>10; and the addition of a new **10 point** category: overall quality; the total for scoring to receive allocations will be increased.*]

One major change, CDD Bischoff indicated, is in the *schools* category; with the passage of SB50, which severely limited the City's ability to impose additional mitigation measures for school facilities.

CDD Bischoff repeated the items which the Commissioners felt controversial or simply disagreed with, stating that the Councilmembers had discussed those at length, but felt the recommendations of the Committee generally should stand as presented.

CDD Bischoff explained that the change in the definition of 'infrastructure' would indicate that that within five years there would be benefit to the community. He asked that the Commissioners give serious consideration of positive recommendation of the proposed Ordinance for the October 15, 2003 City Council meeting, as well as affirmation of the Negative Declaration.

CDD Bischoff introduced Chris Taylor, attorney, of Shute, Mihaly and Weinberger, 396 Hays St., San Francisco. Ms. Taylor was instrumental in drafting the proposed Ordinance. She indicated she would answer questions or provide clarification of issues from the Commissioners.

Chair Mueller called attention to page 7, paragraph 4 of the proposed Ordinance, questioning the 'defensibility' of this section. Ms. Taylor indicated this deals with the extension of and inclusion of properties into the Urban Service Area after March 1, 1990, saying the language is defensible.

Chair Mueller opened the public hearing.

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With no one present to address the matter, the public hearing was closed.

Commissioner Benich said he recognizes the tremendous amount of work done by the Committee and the Commissioners who sat on that Committee, expressing thanks to all the participants. He then called attention to page 4, Section C at the bottom of the page, indicating objection to the exclusion of *schools*, since SB50 has relieved the City of the ability to deal with mitigation for schools; and the same objection was raised on page 10 [section 18.78.040]. (Commissioner Benich reminded that the Commission does award points for schools.) He then turned to page 11 (mixed use) paragraph E indicating the last sentence should be struck to provide flexibility. On page 16 [18.78.115 continued from page 15] Commissioner Benich asked a language change indicating 'City designated Fire Department', noting that all fire departments are 'responsible'. Commissioner Benich asked for clarification of the language at the top of page 21 dealing with quarterly reports. Members of the Commission/Committee responded.

Ms. Taylor again explained the statutory changes brought about by SB50, and stated that the category could be used for award of points.

Chair Mueller conducted a straw vote of those Commissioners present regarding the exclusion of the word *schools* on pages 4 and 10. Commissioners Acevedo, Engles, Lyle, and Mueller opted for removal; Commissioners Benich and Weston wished *schools* to remain in the language. Commissioner Escobar was absent.

Commissioner Lyle explained the discussion/compromise of the terms on page 11. "Some on the Committee thought this language is far too liberal," he stated. CDD Bischoff joined the discussion, saying that, "The Councilmembers spent considerable time on this issue, and the thought appeared to be, 'Something should be awarded.'" Commissioner Lyle said he always felt on the Committee this was just 'giving the store away'. By consensus, the other Commissioners present (Escobar was absent) agreed with Commissioner Lyle. Discussion on page 11 (D) continued with Commissioners suggesting a sentence added to indicate that ~~there would be a minimum score, but not as a first come, first served basis~~ **the first come, first served units must meet minimum scores**. Commissioner Benich repeated his request that the final two sentences of paragraph E be removed. By consensus, with Commissioner Escobar absent, the Commissioners agreed with the suggested language changes on page 16 [18.78.115 continued from page 15] regarding fire departments.

Commissioner Lyle had submitted a list of comments on the latest Measure P update document. He described several as minor, asking staff to deal with those, but calling attention to page 18, where the focus is on ~~housing types~~ competition category, saying language was not discussed by the Committee. Chair Mueller asked how the estimate of numerical allocations had been derived? [Staff to research.]

Commissioner Lyle then directed focus to page 24 item D E , saying the Committee was not aware of the 2005-06 stipulation, adding that it should be changed to 2006-07 with the last sentence struck. Concluding, Commissioner Lyle asked Commissioners and staff to turn to page 6, paragraph 2 and page 12, paragraph 2 to give consideration to suggesting insertion of the word 'approximately' before *five* to avoid the problems concerning allocations from one fiscal year to the next when time

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becomes 'close'. Commissioners Acevedo, Engles, and Mueller agreed, directing staff to examine the issue. "I think this whole matter will drive land price up incredibly high," Chair Mueller explained, "and Ralph's (Commissioner Lyle) suggestion doesn't solve the problem, but will help."

Regarding item F on page 18, Commissioner Lyle said he could come up with an example that doesn't work, and provided an example. "We should have limitations on the amount similar to the amount originally given. There shouldn't be an allowance for a 'big step up' in the allocations," he said. Chair Mueller suggested a similar or small number of units/allocations in the their year. Commissioner Benich said the example provided by Commissioner Lyle appeared extreme. Commissioner Acevedo said it is just a matter of 'common sense', adding that *may* is the operative word.

Chair Mueller conducted a straw vote of those Commissioners present regarding item F on page 18, ensuring a limit on the third year (limitations on the amount similar to the amount originally given, but leaving the word *may* in). Commissioners Engles, Lyle, Mueller and Mueller decided for the limit; Commissioners Acevedo and Benich indicated a preference for no change in the language. Commissioner Escobar was absent.

Discussion ensued of item 7 on page 14 with CDD Bischoff saying the word *schools* would be stricken, and the emphasis would be on 'other public facilities'. All Commissioners present, Escobar was absent, agreed this to be proper.

Responding to a question from Commissioner Weston, CDD Bischoff explained that the preamble regarding the downtown area is consistent with the General Plan and had been well discussed by the Committee. Commissioner Weston asked if the definition by the Down Town Task Force matches for the first two years. CDD Bischoff responded affirmatively. Chair Mueller said the language will be sent from the Down Town Task Force to the Planning Commission and ultimately to the City Council.

COMMISSIONERS WESTON/ENGLES MOVED TO ACCEPT THE PROPOSED NEGATIVE DECLARATION FOR COMPLETENESS AND ACCURACY OF CONTENT. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ESCOBAR.

COMMISSIONER LYLE OFFERED RESOLUTION NO. 03-79, WITH THE CHANGES IDENTIFIED DURING DISCUSSION TO BE LISTED IN AN EXHIBIT 'B' OF THE RESOLUTION, RECOMMENDING THE CITY COUNCIL SUBMIT TO THE VOTERS AMENDMENTS TO THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM. THE MOTION WAS SECONDED BY COMMISSIONER BENICH AND PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ESCOBAR.

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OLD BUSINESS:

**3) ZA-02-12/
DA-02-11: NINA
LANE-CHEN**

A request for approval of a zoning amendment and development agreement for a five-unit residential project located at the southeast corner of Juan Hernandez Dr. and San Vicente Ct. The subject site is approximately 1.26 acres, and is located in the R1(12,000)/RPD zoning district.

AP Tolentino presented the staff report, saying that the staff recommendation includes an RPD overlay with one condition: a lot line adjustment of 2.5 feet, providing lots 1 and 2 with greater lot depths and setbacks Section 6 of Resolution No. 03-64]

Chair Mueller opened the public hearing.

With no one present indicating a wish to address the issue, the public hearing was closed.

COMMISSIONERS BENICH/LYLE MOVED TO ACCEPT THE PROPOSED MITIGATED NEGATIVE DECLARATION FOR COMPREHENSIVENESS AND CORRECTNESS. THE MOTION PASSED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ESCOBAR.

COMMISSIONER BENICH OFFERED RESOLUTION NO. 03-64, RECOMMENDING APPROVAL TO AMEND THE PRECISE DEVELOPMENT PLAN FOR A FIVE-UNIT, SINGLE-FAMILY PROJECT LOCATED AT THE SOUTHEAST CORNER OF JUAN HERNANDEZ DRIVE AND SAN VICENTE COURT. THE MOTION WAS SECONDED BY COMMISSIONER WESTON. (Chair Mueller voiced objection to the motion, saying it was his belief that there was ‘not enough public benefit’ and ‘concern that this action would be setting a precedent’. “Attachment to the Laurel Oaks Home Owner’s Association is not enough for benefit of the public,” he declared. THE MOTION PASSED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, LYLE, WESTON; NOES: MUELLER; ABSTAIN: NONE; ABSENT: ESCOBAR.

COMMISSIONER BENICH OFFERED RESOLUTION NO. 03-65, RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT, DA-02-11: NINA LANE – CHEN. COMMISSIONER LYLE SECONDED THE MOTION, WHICH PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ESCOBAR.

NEW BUSINESS:

**4) ZA-02-16/SD-02-11/
DAA-02-09:DEWITT-
MARQUEZ/
GLUHAICH**

A request for approval of a zoning amendment to Residential Planned Development for the larger five parcel, 9.45-acre area on the west side of DeWitt Ave. within which the subdivision will be developed. The RPD will be developed with a total of 21 single-family residences. Applicant also requests approval of a 5-lot single-family

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residential subdivision and development agreement amendment on an existing two-acre parcel located on the west side of DeWitt Ave. approximately 700 ft. south of the DeWitt Ave. intersection with W. Dunne Ave.

PM Rowe presented the staff report, saying that items 4 and 5 are linked; consequently, there would be one staff report for both. He explained there were a number of actions to be considered, including the Negative Declaration for the entire RPD, which covers many environmental issues. PM Rowe indicated that there had been studies done on the stability of soils and the geology of the area, including the sloping grades. The applicants and residents in the area had met regarding the concerns raised, including traffic and safety relating to the proposed extension of Price Drive. PM Rowe continued by describing the staff recommendations, calling attention to a correction in **Resolution No. 03-73** page 11 (storm drainage) item P3 ~~onsite~~ *offsite*. Also included would be the following addition to Other Conditions: (item 8) *Mitigation measures, such as a detention facility, will need to remain in place indefinitely after the PL-566 channel improvements are completed, or until a regional detention facility or additional channel improvements are constructed.* In **Resolution No. 04-74**, exhibit 'B', section 2, is to be amended to read: ~~six~~ *three or more months*. [Agenda item 5]: page 7 (H2) is not to be checked; page 11 (P3) ~~onsite~~ *offsite*; page 21 (X3) ~~onsite~~ *offsite*. On page 10 of **Resolution No. 03-77**, item O (i) there is a requirement of payment of \$6,000 by the developer to the schools.

Commissioner Lyle pointed out that that in the staff report there is a discrepancy regarding the 100-year flood versus the 25-year flood. SE Creer responded with the explanation of the varying flood lines set by FEMA.

Commissioner Weston asked if the developer has considered how the transition would be accomplished if Santa Teresa is developed, citing a design flaw there. SE Creer responded that the County has an 'official plan line' but the City does not. He was joined by Chair Mueller in explaining the traffic pattern plan.

Commissioner Lyle asked for a fuller explanation of the down-stream/offsite detention pond location shown in the plan. SE Creer informed that the City has no control, because of the lack of a plan line. He reminded that the plans for view indicate that Santa Teresa is to be built to a two-lane road in the area. SE Creer continued by speaking of the need for right-of-way footage, comparing the need to the Butterfield Channel drainage area needs. "It may be necessary to develop regional plans for the drainage," SE Creer said.

Commissioner Weston and Chair Mueller inquired regarding a drainage path to the Spring Manor detention ponds and the general path of drainage. SE Creer responded to both issues. Discussion ensued about detention and retention of drainage water. Chair Mueller said that a detention pond is needed for a 25-year flood drainage and a retention pond is needed for a 100-year flood.

Chair Mueller opened the public hearing.

Bill McClintock, PO Box 1029, was present to represent the applicant. He gave a history of the project. Mr. McClintock pointed out that the gate at the end of Price

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Court had been part of the original map, had been removed from the plan, and was now reinstated. He indicated that the stability of the retaining wall had been studied by a soils engineer for safety. Mr. McClintock explained the drain pipe in the retaining wall, referring to the matter in his report as the 'devater broken pipe issue'. As to traffic issues raised by neighboring residents, Mr. McClintock said the through street will be beneficial to the neighborhood, and the gate will be constructed as indicated. Turning to the matter of the storm drains, Mr. McClintock gave explanation of the mitigation measures and the Water District regarding run-off to the downstream areas. "Why would we channel run-off to Rocke Garcia's property?" he theorized. That property will be developed if Santa Teresa doesn't go through, a downstream pipe (underground) already exists, and it becomes a matter of mitigation issues in the space available, Mr. McClintock said.

Commissioner Acevedo asked about the stability of the hill, as he referenced a letter from the applicants, and noting concern that the development may increase instability.

Joe Rafferty, 15335 Calle Enrique, the geotechnical consultant for this project, identified himself as a Soils Engineer. He said the instability is related to the drainage flowing downstream from the hillside above. He proposes to engineer the project drainage system to mitigate the issue. Mr. Rafferty detailed the red clay soil in the area, which swells when it becomes wet and saturated, then shrinking when dry. "On flat ground," Mr. Rafferty said, "this doesn't present the problems it does on a slope. On hills, at higher levels of geological hazard such soil, when wet, tends to move on a slope, he explained.

Chair Mueller asked what impact on the homes to the west of the project could be expected?

Mr. Rafferty responded that this project, being sloped would not impact existing homes. "They need to maintain drainage on their property. I don't see significant impact on the upslope of homes," Mr. Rafferty said.

Commissioner Lyle asked who employs Mr. Rafferty? Mr. Rafferty identified Mr. Marquez, one of the applicants, as having hired him.

Peter Anderson, 17440 Ringel Dr., a consultant for the City who conducted a peer **review** of the geological report for this project, explained how his work is done: the work of the applicant's soils engineer is reviewed to completeness and accuracy. He commented that shallow ground water is sometimes found in the area, with the exploration by the soils engineer having been done in August (the dry season), causing concern that the exploration for ground water may not be representative of all the area. "The issue is not of grave concern," Mr. Anderson said. "However, if during construction substantial groundwater is encountered, the potential for that should be included in the report."

Marc Nehamkin, 16925 John Telfer Dr., said he is speaking to agenda items 4 and 5. He indicated he chose this location for his home because of the cul de sac. Mr. Nehamkin told Commissioners that the slopes on both sides of the street narrow the street and there are numerous traffic safety issues because of the narrowness and the many curves on the road. "Additional traffic will be hazardous to children unless

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sidewalks are either placed by the City or required of the developer,” Mr. Nehamkin stated. “And Price as a through street will not help, I am very opposed to having the street opened.”

Kristine Gagliardi, 16935 John Telfer Dr., said she supports progress, but doesn’t condone nor support a deliberate attempt to mislead the public, adding that she opposes both agenda items 4 and 5. The concerns of the neighborhood need to weigh heavily in the decision making. Disagreeing with the soils engineer, Ms. Gagliardi said that studies show there will be significant impact because of the soil instability. “I oppose opening a thoroughfare of Price Drive,” Ms. Gagliardi announced, “that would not benefit the area.” Commissioner Weston mentioned that the applicant(s) have said the drainage will be rerouted. Ms. Gagliardi reiterated that rerouting drainage would be of no benefit, as the area becomes a ‘river’ during wet seasons.

Cynthia Bunch, 16830 Price Dr., told Commissioners she has lived at this location for 20 years and has discovered a natural spring under her home, and has had to construct an eight-foot retaining wall. Ms. Bunch mentioned that in 1996 there were 18 homes in the subdivision. As to the plan for a ‘loop’ road, Ms. Bunch suggested reducing the number of homes. “Steep slopes are a real concern,” Ms. Bunch indicated, “as well as traffic”, whereupon she suggested installation of speed bumps on Price Drive. Already there is a lot of traffic on John Telfer Drive, and if the street is allowed to go through, that traffic will fly down Price Drive. “If the street goes through,” Ms. Bunch insisted, “there will be considerable increase in traffic and safety issues; this is not a good area for increased traffic.” Ms. Bunch also expressed concern regarding lot size minimums and removal of trees. “I want the City, the developer, and future home owners held liable for the issues raised,” Ms. Bunch said in conclusion.

Doug Bennett, PO Box 696, said that as to the street going through, he is opposed. Mr. Bennett said that in checking with the El Toro Fire Department, he ascertained that for the most part crisis calls are routed through existing routes. Mr. Bennett said that CDF indicates they will use the new road until Santa Teresa goes through. Continuing, Mr. Bennett talked about concerns of fast traffic and land slippage. “I want the City, the developer, and future home owners held liable for the issues raised,” Mr. Bennett said in wrapping up.

Patricia Possley, 16910 John Telfer Dr., said she has lived in her residence for 17 years and is opposed to the street going through. Mrs. Possley pointed to her dwelling next to Price Drive as she spoke to concerns of drainage. “Sometimes the street looks like a river,” Ms. Possley stated. “My yard is sinking and my retaining wall has collapsed before.” Mrs. Possley chastised the Commissioners, asking why they did not listen to the citizens, and stating an opinion that developers have more pull with the Commission. “I want consideration of what the residents want,” Ms. Possley insisted.

Judy Schatz, 16905 Price Court, said the project is on a 35% grade. The road is a big cul de sac, Ms. Schatz indicated, as she spoke of curbing shrinking and cracks in the pavement. “A river runs down the street in winter. I have seen 2 – 3 inches of water running down Price Drive to the field where the houses are proposed,” Ms. Schatz asserted.

Jim O’Neill, 16945 John Telfer Dr., spoke of his concern for youth safety, indicating

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that he has seen 'many near accidents' and questioning how the road being opened could help neighborhood safety?

Commissioner Engles asked if, when Mr. O'Neill moved into the neighborhood with a dead-end street, or even with a cul de sac, could it not seem possible that the dead end would not be permanent? Mr. O'Neill responded that the street had indeed been a dead-end with no indication of activity or development.

Doug Bennett, P.O. Box 696, spoke again, saying he had seen several run away cars, as well as one moving (transport) truck, as he described the incidents. Mr. Bennett called attention to lots 12 – 13 - 14, which he said are below the 12,000 s.f. minimum required in the area.

Commissioner Lyle asked about the allegations that water runs down Price Drive, as he wondered about the construction of a pipe drainage system versus the existing system.

Bill McClintock explained that there would be the capacity issues when water flows are up, but it is a matter of getting water into the catchment basins.

Chair Mueller asked about the path of getting the drainage water to the catchment basins?

Mr. McClintock said that the catchment basin will be designed for greater efficiency.

Commissioner Lyle asked about the potential lot line adjustments, expressing interest that some of the lots were less than 20,000 sf. Mr. McClintock said the matter of lot line adjustment would be heard by the Commissioners on November 11, 2003.

Commissioner Weston inquired concerning the length of the drainage pipe? Mr. McClintock responded with an explanation of the drainage pipe installation pattern.

Commissioner Engles asked why Price Drive was being considered for extension all the way up to the dead-end when the developers could use Loop Drive? Mr. McClintock responded by explaining the requirements dealing with lengths of dead end streets.

With no others appearing to address the issue, the public hearing was closed.

PM Rowe explained that there had been a test on rezoning in 1996. Police and Fire Departments gave the reason for supporting through construction would be easier police controls and a two-way access for Fire Department personnel and equipment. It was indicated, he said, that emergency response time would be lessened.

Commissioner Engles asked if citizens could find out if a dead end street might be abolished and the road extended? PM Rowe said that information is available at City Hall. SE Creer said that now signs are posted on dead-end roads along with barricades. SE Creer provided insight into the history of sign use at such sites.

Turning attention to the Negative Declaration, Chair Mueller said it appears a concern

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exists regarding storm water down Price Drive to the storm water catchment basins. Commissioner Weston suggested a study to ascertain all the issues. SE Creer indicated a study was not a viable solution because of the volume of water being too great. Chair Mueller said it is important to establish that as much storm water as possible could be captured and contained. SE Creer said that as water is moved down Price Drive, a 'crown' in the road forces the water to the curb/gutter, and suggesting that the existing catchment system needs modification.

Commissioner Weston said there are detention pond issues as proposed, and proposing that a better placement for the catchment system would be on the project, not 600-feet down the road, nor through a neighboring development. "I think the plan is flawed," Commissioner Weston proclaimed, as he suggested deleting one of the units and place the detention pond there and make a park of the identified lot.

Chair Mueller commented that one of the major problems is that the City has no plan line for Santa Teresa. SE Creer said that was the reason that the best plan is for the detention pond to be offsite.

Commissioner Lyle asked what assurance there is in the long term for ~~catchment~~ **detention** ponds? "What if Santa Teresa doesn't go through and Roche (Garcia) puts in a development?" he asked.

SE Creer said that easement agreements are handled through plan check processes, and placement of the pipe is a private negotiation.

Commissioner Acevedo referred to the potential for shallow ground water under the construction sites during wet weather. Chair Mueller said this area is known for catchment issues and Spring Hill development has water under the homes because of the ground water table.

SE Creer explained the design of the proposed oversized drainage pond.

Chair Mueller asked if this might make the water under Spring Hill worse? SE Creer said the increased water problems in Spring Hill are lessened once the storms are over.

PM Rowe explained the drainage pipe network proposed, noting that this system would provide excess capacity.

Commissioner Acevedo called attention to page 6 of the mitigated Negative Declaration, Measure VIII-1 which deals with the preparation and submittal of a hydrologic and hydraulic analysis.

The mitigated Negative Declaration (Measure VIII-1 through 6) was discussed by the Commissioners, with modification to Measure VIII-2 to include expansion of storm drain inlets, with this being a condition of the subdivision agreement as well.

COMMISSIONERS LYLE/ENGLES MOTIONED TO APPROVE AND ACCEPT THE MITIGATED NEGATIVE DECLARATION, WITH THE MODIFICATION AS NOTED. THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, LYLE,

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MUELLER; NOES: WESTON; ABSTAIN: NONE; ABSENT: ESCOBAR.

Turning to **Resolution No. 03-72**, Commissioners noted that **Section 2** should be expanded to have an RPD overlay for the property with a precise development plan required. A number **3**) was added to **Section 5** requiring a condition of lot 13 to 20,000 s.f. (this would be **item 9** in *standard conditions/other conditions* for **agenda item 5**); further all lots touching the western property line of Price Drive would be 20,000 s.f.

Chair Mueller asked that the Resolution show that a gate will be placed on Price Drive (noting that a lot of the residents don't want a through road). Commissioner Lyle spoke on the gate placement near his residence, stating a belief that it could limit emergency response time. "I've heard how unsafe John Telfer is," Commissioner Lyle stated, "why not provide a safer way to John Telfer Road?" adding that he believes traffic trips would be taken off an unsafe route.

Commissioner Benich said he can see where the people are coming from as he suggested narrowing the ends of Price Drive and John Telfer Drive then installing a six-foot section of paved block/grass intermingle with a sign: Police and Fire Only. "This would be a turf block section for emergency use only," Commissioner Benich said.

Commissioner Acevedo indicated understanding that the police and fire personnel would use the most direct route(s) available. He continued by indicating concern about sidewalk placement, but said that he would favor leaving the street to be opened.

Commissioner Engles commented that he thought John Telfer Street was always meant to go through.

Commissioner Weston favored a variation of the suggestion made by Commissioner Benich, saying the area should be left as 'natural as possible'.

Chair Mueller thought the people who live near John Telfer Drive and Dunne would go through Price increasing traffic and resulting in unsafe conditions as these roads were not built to current standards. The issue, he said, would be that present residents would be going a new way, and resulting in altering the way of the traffic patterns. Chair Mueller indicated he would not favor the turf blocks.

PM Rowe said staff would have issues surrounding turf blocks.

Commissioner Weston said he would be willing to have the road narrowed and a gate installed.

COMMISSIONER LYLE OFFERED RESOLUTION NO. 03-72, WITH THE MODIFICATION THAT LOT 13 BE A MINIMUM SIZE OF 20,000 SF., AS WELL AS ALL THE LOTS TOUCHING PRICE DRIVE HAVING THE SAME REQUIREMENT, WITH APPROVAL RECOMMENDATION OF A ZONING AMENDMENT FROM COUNTY OF SANTA CLARA HS-SR TO CITY OF MORGAN HILL RESIDENTIAL R1-12000/RPD RESIDENTIAL PLANNED DEVELOPMENT OVERLAY FOR TWO PARCELS AND A PRECISE

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DEVELOPMENT PLAN FOR THE ENTIRE 5-PARCEL RPD LOCATED ON THE WEST SIDE OF DEWITT AVE., 700 FEET SOUTH OF THE DEWITT AVENUE INTERSECTION, WEST DUNNE AVENUE. THE MOTION WAS SECONDED BY COMMISSIONER ACEVEDO, BUT FAILED TO GAIN PASSAGE BY THE FOLLOWING VOTE: AYES: ACEVEDO, ENGLES, LYLE; NOES: BENICH, MUELLER, WESTON; ABSTAIN: NONE; ABSENT: ESCOBAR.

Commissioner Engles said he could see changing the through street to the installation of a gate with emergency access being permitted, but through traffic not allowed.

SE Creer said that at present no City streets are designed this way and the legality/liability needs to be considered by study in the City Attorney's office.

Commissioners Engles and Weston suggested that it not be a public street, but consideration be given to reduced standards.

Chair Mueller suggested that resolution of the issues be studied by staff then obtaining a City Attorney opinion.

PM Rowe said one of the concerns is the image of precedence setting.

Commissioners engaged in discussion of problem solving of the issues involved.

PM Rowe said that if portions of Price Court were vacated as a public street, there would still be need of having easements in place.

A straw vote indicated that four of the Commissioners present (Engles, Weston, Mueller, and Benich) would favor closing the street, while two Commissioners (Acevedo and Lyle) would oppose the closure and Commissioner Escobar was absent.

Turning to Resolution No. 03-73, PM Rowe suggested continuing the item and directing staff to study further modification. It was noted that Commissioners had already agreed to the changes to agenda item 5 reflecting the requirement of minimum lot size for lot 13 and those touching Price Drive.

COMMISSIONERS BENICH/WESTON MOTIONED TO CONTINUE THE MATTER TO THE NEXT MEETING, PENDING STAFF RECOMMENDATION FOR FURTHER MODIFICATION OF THE PLAN(S). THE MOTION CARRIED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT; ESCOBAR WAS ABSENT.

5) ANX-03-02/ SD-03-05/DA-03-05: DEWITT-MARRAD GROUP

A request for annexation of two parcels (2 acres each) totaling 4 acres located on the west side of DeWitt Ave. approximately 700 ft. south of the DeWitt Ave. intersection with W. Dunne Ave. into the City of Morgan Hill. Applicant also requests approval of a 4-lot single-family residential subdivision on the northernmost parcel of the two parcels being considered for annexation and approval of a residential development agreement for the project.

Noting the staff report was given by PM Rowe in conjunction with Agenda item 4,

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Chair Mueller opened the public hearing.

Doug Bennett reiterated the concerns voiced during the public hearing for Agenda item 4.

With no others indicating a wish to speak to the matter, the public hearing was closed.

COMMISSIONERS WESTON/ BENICH MOTIONED TO CONTINUE THE MATTER TO THE NEXT MEETING, PENDING STAFF RECOMMENDATION FOR FURTHER MODIFICATION OF THE PLAN(S). THE MOTION CARRIED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT; ESCOBAR WAS ABSENT.

6) UP-03-07: JARVIS- GENERATIONS FOURSQUARE CHURCH

A request for approval of a conditional use permit to allow a Church use to be located in an existing 41,890-sf building. The proposed use includes congregation areas, classrooms, sports court, a dining facility and various meeting rooms/offices. The subject building is located at 675 Jarvis Dr. in the Morgan Hill Ranch Business Park in a PUD zoning district.

AP Tolentino presented the staff report, and noted that the Morgan Hill Ranch CC&Rs is a private agreement, and not a matter of City enforcement.

Commissioners present asked about various properties and businesses in the Business Park as they identified the location of the proposed site. Other questions regarding the specific uses within the park were also discussed:

- prohibition of group 'e' occupancy
- daycare (or after school tutoring) at the site
- definition of 'daycare' within the health and welfare safety codes
- drop off and pickup times for the after school program
- legal concerns raised by Venture Corporation, the developer of the Business Park

Chair Mueller opened the public hearing.

The following is a list of the persons speaking in favor of the request for approval of a conditional use permit:

Chris Twardus, 16960 Helene Lane
Jim Coffaro, Jr., 7032 Cheery Chase Way, San Jose
Ron Dick, 1726 Ewer Dr., San Jose (Architect for the project)
André Walewski, 450 West Santa Clara St., San Jose
Eric McLean, 2870 Rancho Rea, Aromas
Stephen J. Vondrach, 490 Jarvis Dr.
Kathy King, 380 Tennant Ave., # 7
Robert Collins 864 Claremont Dr.

Issues and affirmations by the speakers included:

- the Church has been in South San Jose in a business park location for 15 years and the neighbors 'like' the operation
- the location in Morgan Hill would benefit the City with additional business use

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by the parishioners

- youth services in the City would be enhanced
- traffic would be increased only on Sundays when other businesses in the business park generally experience less traffic
- this Church is part of the same denomination as another Church in Morgan Hill, but the two are separate congregations
- the Church currently has 36 families residing in Morgan Hill, San Jose, Gilroy and other outlying areas the remaining families are from
- other sites have been considered in Morgan Hill, but Church officials consider this to be a prime location because of freeway access
- the proposed use is not a business nor will it interfere with the currently operating businesses
- there are currently no plans for a school
- the operation will have a positive impact on the existing schools and youth services in the city
- the after school tutorial program will meet identified needs
- ample room exists for the planned activities (tot lot, patio area for youth) [Church officials indicated a willingness to redesign these areas with screening if so directed]
- the precedence for such use within a business park is well established throughout the bay area
- the mitigated negative declaration sufficiently addresses environmental concerns including traffic
- the proposed use will revitalize a dormant building in the business park, left vacant following the downturn in the technical industry
- parking for 180 spaces has been secured [Church officials indicated this would be ample]
- letter-based agreement for a long-term informal parking arrangement with a neighboring parcel owner

Concerns regarding the project were discussed:

- parking – and the lack of a recorded shared parking agreement [considerable discussion revolved around this concern]
- the need for sufficient time between Sunday services to lessen the chance of traffic congestion [Church officials strongly objected to this notion]
- the proposed reduction of ‘pick up times’ for the after school tutorial
- the need for flexibility of times for programs and services to be offered
- controversy regarding the potential sale to the vacant Venture Corp. lot to the Church and its implications on Venture Corp.’s objections to the proposed use
- possibility of restricted marketability of vacant Venture Corp. lot because of potential objection to the tot lot visibility and the noise from youth activities during the week and after school

Speakers objecting to the proposal were:

Gaye Quinn, 600 Miller Ave., Mill Valley
Jolie Houston of the Berliner Cohen firm

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These speakers raised the following issues:

- the City's premier business park is not a suitable location for churches (Venture Corp. representatives did voice support for local churches, just not at this location)
- deficiencies in the Negative Declaration
- lack of study of traffic issues, especially peak hour trips
- parking
- concern about the validity of the letter-based agreement for a long-term informal parking arrangement with a neighboring parcel owner
- lack of recordation/identified number of spaces for long-term parking arrangement
- incompatibility with other uses in the business park
- a perception that the request was 'rushed' to public hearing
- restrictions of use by future tenants/occupants in the business park
- concerns that mitigations for the identified issues are not clear and not in place
- the need for further study; lack of same may result in 'serious problems'

Commissioners noticed the following areas of concern warranted further discussion:

- > parking
- > incompatibility with nearby industrial uses in the business park
- > need for mitigation of identified issues
- > traffic

Church officials commended staff for completing a 'very thorough review' and noted this is a 'permitted use in the business park'.

With no others present to speak to the matter, the public hearing was closed.

Commissioner Benich said that after reading the staff report and hearing both sides, he is convinced this is a good project, comparing it to a Philadelphia (PA) business park he recently toured. He did voice limited concerns about the after school program, saying that possibly there should be some restrictions on the uses and times. "Overall, I think this will be a good addition to the City, in a perfect location," Commissioner Benich proclaimed.

Commissioner Acevedo said he would welcome the Church, and was impressed with the work proposed for the City's youth. "However," he said, "this is the premier business industrial park in town and I question the suitability of the location for a church."

COMMISSIONERS BENICH/ENGLES MOTIONED TO APPROVE THE MITIGATED NEGATIVE DECLARATION.

Commissioner Lyle called attention to **page 2, section IV** of the document, asking that an inclusion be made into **item 2**: Recordation of the shared parking agreement, inclusive of a one-year review of the parking issues.

PM Rowe informed that there are no other churches in the City that were required to

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record a shared parking agreement.

Commissioner Engles informed that such agreement is in place for churches in some South San Jose locations.

Chair Mueller asked that **item 3** be added to **page 2, section IV** of the Mitigated Negative Declaration: A traffic review is to be conducted after six months of operation of the use.

Commissioner Weston asked staff to reevaluate the number of parking spaces needed.

PM Rowe explained the standard for parking at such facilities.

Commissioners discussed **page 2, section IV** of the Mitigated Negative Declaration: **item 2** regarding the number of shared parking spaces.

Commissioner Weston wanted it clearly understood by the Church participants that by relocating to an Industrial Park there would be disclosure of potential uses, including chemicals. "The Church should acknowledge that the uses are present which are not generally associated with residential uses," Commissioner Weston said.

Commissioner Engles wondered if such notice would be necessary? "By the fact they are purchasing and moving into an industrial location, this is implied acknowledgement," he said.

Chair Mueller cited other locations where an evacuation plan has been required as a condition of occupancy. "It should be a condition here, too," he said.

PM Rowe advised that if the Mitigated Negative Declaration were modified as suggested by the Commissioners, it would be necessary to recirculate the document.

Commissioner Lyle said he is concerned regarding the recommended findings (Section III 4(b) in the Mitigated Negative Declaration and the possibility of 'long term effects'. "This use," he said, "is probably OK as it is in the corner of the business park."

Chair Mueller polled the Commissioners and ascertained that Commissioners Lyle and Acevedo oppose the request for a Conditional Use Permit and the Mitigated Negative Declaration. Commissioner Acevedo likes having the Church in the City, but doesn't agree with the site compatibility.

THE MOTION PASSED ON A 4 – 2 VOTE (BENICH, ENGLES, MUELLER, WESTON VOTED YES; ACEVEDO, LYLE VOTED NO; ESCOBAR WAS ABSENT.

Turning to look at **Resolution No. 03-78** (other conditions), Commissioners recommended the shared agreement parking be recorded and a traffic review be conducted after six months of operation of the facility.

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Commissioner Engles said he feels the hours of use of the facility should not be tied to the CUP. "If they buy the property, they can use it when they want/need to," Commissioner Engles asserted, adding that he believed such condition should be removed. "Anyhow, there would be no way to monitor such a condition," he maintained.

Linking to that notion, Commissioner Benich appeared to agree as he questioned the extended time recommendations between the Sunday services. "The entire congregation doesn't stay around that long; an hour is too long to have between the services."

Commissioners Engles and Benich recommended that a half-hour separation between the services would be reasonable.

Chair Mueller cautioned that care must be taken to avoid the appearance of day care at the facility. Discussion ensued regarding day care and the need to limit pickup time. Chair Mueller suggested language stating 'within one-half hour of conclusion of the tutoring program'. Church officials petitioned for the full two hours.

COMMISSIONER BENICH OFFERED RESOLUTION NO. 03-78 APPROVING A CONDITIONAL USE PERMIT TO ALLOW A CHURCH FACILITY TO OCCUPY AN EXISTING 41,890-SF LIGHT INDUSTRIAL BUILDING LOCATED AT 675 JARVIS DRIVE IN THE MORGAN HILL RANCH BUSINESS PARK, WITH THE FOLLOWING MODIFICATIONS:

G1 The shared parking agreement shall be recorded against the property providing the off-site parking.

G3 One-half hour is required between the end of a Sunday service and the start of the next Sunday service

G6 Solid screening of the exterior areas is required

G7 A review of traffic is required after six months of operation.

G8 Pick up times will be limited to one-half hour following the conclusion of tutoring

THE MOTION WAS SECONDED BY COMMISSIONER ENGLES AND CARRIED BY THE FOLLOWING VOTE: AYES: BENICH, ENGLES, MUELLER, WESTON; NOES: ACEVEDO, LYLE (both of whom noticed this is a premier business industrial park and questioning the suitability of the location for a church); ABSTAIN: NONE; ABSENT: ESCOBAR.

OTHER BUSINESS:

8) POLICY DIRECTION REGARDING FOR-SALE ATTACHED HOUSING UNIT

AP Tolentino gave the staff report, providing an update of the Commission-formed Attached Housing Subcommittee. AP Tolentino informed the Commission that the Council will be requested to provide policy direction regarding the insurance issue for ownership attached housing at the upcoming October 1 Council Meeting.

Dick Oliver, a member of the subcommittee, said that group is working and trying to find a solution to the vexing issue. "We are proceeding with caution as we don't want to compromise the General Plan or Measure P," Mr. Oliver avowed.

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ANNOUNCEMENTS American Planning Association (APA) Audio Conference on October 1, 2003 at 1:00 p.m. in the Council chambers. PM Rowe said the audio interactive conference would last for one hour with the subject being 'Street Designs'. The information, he said, could be applied to street standards, which is of interest to the Commissioners. All were encouraged to attend.

Commissioner Weston said he had signed up to be part of the BART tour.

ADJOURNMENT: With no further business to come before the Commission, Chair Mueller adjourned the meeting at 12:15 a.m.

MINUTES RECORDED AND PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk